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April 11, 2008
Date

Denise Sheridan
Denise Sheridan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. :	09/858,145	Confirmation No. :	2191
Applicants :	Thomas Prohaska and Daniel Prohaska		
Filed :	May 14, 2001	Attorney Docket No.:	501009.01 (29975/US)
Art Unit :	3622	Customer No. :	27,076
Examiner :	Jeffrey D. Carlson		
Title :	THIRD PARTY PAYOR METHOD AND SYSTEM FOR DISTRIBUTING FINANCIAL BENEFITS		

REPLY BRIEF TRANSMITTAL

Mail Stop Appeal Brief –Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is the Reply Brief in this application, with respect to the Examiner's Answer mailed February 11, 2008.

Applicants believe no fee is warranted at this time. However, the Commissioner is authorized to charge any deficiency or overpayment to Deposit Account No. 50-1266.

Respectfully submitted,

DORSEY & WHITNEY LLP

A handwritten signature in black ink, reading "Edward W. Bulchis". The signature is written in a cursive style with a large, stylized "E" and "B".

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APPELLANT'S REPLY BRIEF (37 C.F.R. § 41.41)

Sir:

This brief is in response to the Examiner's Answer mailed February 11, 2008.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of this application, Wealthbank Corporation., an Idaho Corporation having a principal place of business in Coeur D'Alene, Idaho.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, the Appellant's legal representative, or the Assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-3, 5, 6, 11-21, and 24-67.

B. STATUS OF ALL THE CLAIMS

1. Claims canceled: 4, 7-10, 22, 23, 68-77.
2. Claims withdrawn from consideration but not canceled: None.
3. Claims objected to: None.
4. Claims allowed or confirmed: None.
5. Claims rejected: 1-3, 5, 6, 11-21, and 24-67.

C. CLAIMS ON APPEAL

The claims on appeal are: 1-3, 5, 6, 11-21, and 24-67.

IV. STATUS OF AMENDMENTS

Appellant's amendment filed January 9, 2007 has been entered. Appellant hereby cancels claims 68-77, and withdraws the request for review of the 35 U.S.C. §101 rejection of claims 68-77.

V. SUMMARY OF CLAIMED SUBJECT MATTER

1. Introduction

The present application is directed toward solving the problem of how a party may compensate, for example, an attorney through a third party for services rendered. An embodiment of the disclosed method of conducting transactions includes three entities or persons. Typically, there are one each of: an attorney, the attorney's client and a third-party service provider. In one embodiment, the attorney provides legal services to the client and also refers the client to the third-party service provider. The third-party service provider then arranges to provide another type service to the client and is paid a fee by the client for doing so. In one embodiment, the third-party service provider manages some of the assets or wealth of the client on an ongoing basis. Once the client pays the fees of the third-party service provider, the provider then pays the attorney for the legal services that were previously rendered to the client. As the relationship between the third-party service provider and the client continues, the attorney will typically continue to advise the client as to matters relating to the management of the assets or wealth. Payment for the legal advice and services dispensed in this capacity will further be paid out of the ongoing fees paid to the service provider for the management of the assets or wealth. It should be noted, however, that the advice and legal services are rendered by the attorney for and at the behest of the client. Said another way, the attorney has a relationship with the client and not with the third-party service provider.

This arrangement for the provision of services, legal and otherwise, as well as payment of fees has several advantages. For example, the relationship between the attorney and the client remain independent of the relationship between the client and the third-party service provider. One advantage of this is that the client is free to use one of their existing attorneys. Also, the attorney may independently evaluate the services provided by the third-party service provider and advise the client accordingly which is of benefit to the client. Lastly, the client has the advantage of paying only one set of fees, to the third-party service provider, for both the legal services rendered by the attorney and those rendered by the service provider. Of course, this arrangement is also beneficial to the attorney because it not only allows them to maintain an

independent practice, but also to benefit from the overall relationship without running afoul of ethics regulations that prohibit receipt of referral fees.

The “traditional business model” of the admitted prior art discloses a very different scheme for distributing legal and financial services to a client. As explained in greater detail below, unlike applicant’s business model, the traditional business model provides no financial benefit to the client and no non-financial benefit to the attorney for the attorney referring the client to the service provider.

Support in the specification for the limitations of the independent claims is pointed out below.

2. Claim 1

Claim 1 is directed to a method of conducting business transactions. *See Specification*, page 1, lines 4-10. The method includes a “first entity providing a first type of service to a second entity[.]” In one embodiment, the first entity provides legal services to a client. *See Specification*, page 7, line 21 – page 8, line 17. The method also includes “the first entity referring the second entity to a third entity for performing a first benefit for the second entity” In an embodiment, the third entity can be, for example, a benefit provider. *See Specification*, page 8, lines 27-29. The first entity refers the second entity to the benefit provider. *See Specification*, page 8, lines 1-4. The “first benefit for the second entity” is the benefit provided to the client by the benefit provider. *See Specification*, page 8, 18-33. The method also provides that the first entity is “not accepting fees for referring the second entity to the third entity[.]” *See Specification*, page 2, lines 29-31. Also, the first entity may “not [perform] the first benefit for the second entity[.]” *See Specification*, page 11, 18-19. The method also includes the step of “the third entity performing the first benefit for the second entity[.]” *See Specification*, page 8, lines 1-4. The method includes the step of “the third entity accepting fees from the second entity for providing the first benefit[.]” *See Specification*, page 8, 18-21. Lastly, the method provides the steps of “the third entity compensating the first entity for the first type of service the first entity provides to the second entity from fees the third entity charges the second entity for providing the first benefit.” *See Specification*, page 9, 5-15.

3. Claim 37

Claim 37 is directed to a method of providing legal services to a client. The method includes the step of “enlisting at least one attorney to provide the legal services to the client[.]” *See Specification*, page 7, line 21 – page 8, line 17. “[T]he at least one attorney [refers] the client to an asset management entity[.]” *See Specification*, page 8, lines 1-4. The method also provides that the attorney is “not accepting fees for referring the client to the asset management entity[.]” *See Specification*, page 2, lines 29-31. “[T]he asset management entity [charges] a fee to the client for managing the asset[.]” *See Specification*, page 8, 18-21. Lastly, the method includes the step of “the asset management entity compensating the attorney for the legal services provided to the client by paying the attorney a portion of the fees the asset management entity charges the client for managing the asset.” *See Specification*, page 9, 5-15.

4. Claim 65

Claim 65 is directed to a third-party compensation method for providing legal services to a client. The method includes the step of “establishing a relationship between an attorney and the client to provide legal services to the client concerning management of an asset owned by the client[.]” *See Specification*, page 7, line 21 – page 8, line 17. “[T]he attorney [refers] the client to an asset management entity to manage the asset of the client[.]” *See Specification*, page 8, lines 1-4. The method also provides that the attorney is “not accepting fees for referring the client to the asset management entity[.]” *See Specification*, page 2, lines 29-31. The method further provides “establishing a relationship between the client and the asset management entity, and, pursuant to the relationship, the asset management entity managing the asset owned by the client and charging a fee to the client for managing the asset[.]” *See Specification*, page 8, 18-21. The method includes the step of “establishing a relationship between the attorney and the asset management entity[.]” *See Specification*, page 9, 5-15. Finally, “pursuant to the relationship between the attorney and the asset management entity, the asset management entity compensating the attorney for legal services provided to the client regarding the asset being managed by the asset management entity, the compensation being provided from the fees the asset management entity charges the client for the management of the asset.” *See Specification*, page 9, 5-15.

5. Claim 66

Claim 66 is directed to a third-party compensation method for providing legal services to a client. The method includes “providing a network of member attorneys affiliated with an asset management entity[.]” *See Specification*, page 10, lines 27-28. The method includes the step of “the member attorneys providing legal services to clients regarding respective assets owned by the clients[.]” *See Specification*, page 7, line 21 – page 8, line 17. “[T]he member attorneys [refer] clients to the affiliated asset management entity[.]” *See Specification*, page 8, lines 1-4. The method also provides that the member attorneys are “not accepting fees for referring the clients to the affiliated asset management entity[.]” *See Specification*, page 2, lines 29-31. The method further provides “the asset managing entity managing the respective assets of the clients, the asset management entity charging the clients fees for managing the assets[.]” *See Specification*, page 8, 18-21. Finally, the method also provides that “the asset management entity [compensates] each member attorney for the legal services provided by each member attorney to each of the member attorney’s clients having an asset managed by the asset management entity.” *See Specification*, page 9, 5-15.

6. Claim 67

Claim 67 is directed to a third-party compensation method for providing legal services to a client. The method includes the step of “establishing a first relationship between a client and the attorney, the attorney providing legal advice to the client concerning the clients wealth [.]” *See Specification*, page 7, line 21 – page 8, line 17. The method requires the attorney be “not accepting fees for referring the client to a wealth management entity[.]” *See Specification*, page 8, lines 1-4 and page 2, lines 29-31. The method further provides “establishing a second relationship between the client and a wealth management entity, the wealth management entity charging a fee to the client to manage the wealth of the client[.]” *See Specification*, page 8, 18-21. Finally, the method also requires “establishing a third relationship between the wealth management entity and the attorney, the attorney referring the client to the wealth management entity and the wealth management entity compensating the attorney for legal services provided to the client[.]” *See Specification*, page 9, 5-15.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection to be reviewed on appeal is whether claims 1-3, 5, 6, 11-21 and 24-67 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the “traditional business model” of the Applicant’s admitted prior art (‘AAPA’). (*Office Action* dated April 19, 2007.)

VII. ARGUMENTS

Claims 1-3, 5, 6, 11-21 and 24-67 are nonobvious over the AAPA

The Examiner references “obvious to try” as a rationale to support rejection. See *Examiner’s Answer*, page 9. The Patent Office’s Guidelines set out a framework for holding obviousness based on “obvious to try.” See “Examination Guidelines for Determining Obviousness under 35 U.S.C. 103 in view of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. at 57526-27, available at <http://www.uspto.gov/web/offices/com/sol/notices/72fr57526.pdf>.

The guidelines, and *KSR*, indicate a claim may be obvious if “there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions.” See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742; see *Guidelines* at 57532. The Guidelines then require Office personnel to articulate:

“(1) a finding that at the time of the invention, there had been a recognized problem or need in the art, which may include a design need or market pressure to solve a problem;

(2) a finding that there had been a finite number of identified, predictable potential solutions to the recognized need or problem;

(3) a finding that one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary...”

See *Guidelines* at 57532.

The Examiner has not made at least the first two showings of a design need or market pressure and a finite number of identified, predictable solutions.

(1) Finding there was a recognized problem

The Examiner states “[i]t would have been obvious to one of ordinary skill at the time of the invention for the *desire* to send a referral fee...” from a third entity to a first entity “yet to designate any such compensation as other than a referral fee given the illegalities of such.”

The Examiner has documented only desire to receive a possibly unlawful referral fee. Besides a bare human desire to receive further compensation whenever possible, it is unclear what knowledge in the art underlies this desire. The possible illegality of a referral fee may equally suggest the lack of a market need to compensate one entity when the entity refers a client to another entity.

Even if plausible, however, the Examiner's articulated motivation is drawn toward the incorrect end – that of providing a referral fee. Appellant's disclosed systems and methods are not directed toward the end of providing a referral fee. Instead, disclosed embodiments of Appellant's methods and systems propose a new arrangement of service providers and take a fresh look at methods by which service providers may be compensated. See *Specification* page 8, lines 7-9 (“... fees for those ongoing services performed by the attorney 210 will be paid from the benefit provider 220 under a defined schedule.”). In this manner, the threat of illegality is removed. See *Specification* at page 8, line 2 (disclosing an engagement agreement comporting with ethical rules). Compensation is made for services rendered as agreed and not for referring.

These disclosed systems therefore overcome drawbacks of the “traditional business model” as outlined on page 2, line 27 – page 3, line 8, including the need for a client to pay two entities at two different times, and the fact that an asset management entity may receive continuous, periodic payments while an advising attorney is only paid at the start of the relationship.

Elements of Appellant's independent claims indicate that compensation is paid to an entity for services rendered, not for a referral. For example, Claim 1 recites in part “the third entity compensating the first entity for the first type of service the first entity provides to the second entity.” Claim 37 recites in part “the asset management entity compensating the attorney for the legal services provided to the client by paying the attorney a portion of the fees the asset management entity charges the client for managing the asset.” Claim 65 recites in part “the asset management entity compensating the attorney for legal services provided to the client regarding the asset being managed by the asset management entity, the compensation being provided from the fees the asset management entity charges the client for the management of the asset.”

Therefore, a known desire in the art to provide attorneys with referral fees is not germane to analysis of Appellant's systems and methods which describe a new arrangement and method for compensating service providers, not methods for paying referral fees.

(2) The Examiner has not articulated a finite number of identified, predictable potential solutions

Even assuming the existence of an adequate recognized problem, the Examiner did not articulate a finite number of identified, predictable potential solutions. In fact, quite the opposite, the Examiner remarks that it would have been obvious to provide funds between the third and first entities in claim 1 "in the form of a gift or a dinner or an amount of money without calling it a referral fee." See *Examiner's Answer*, page 5. No doubt any number of other beneficial items could be placed on that list ranging from golf lessons and dinner cruises to complimentary spa appointments. There simply are not a finite number of ways to provide compensation, and the Examiner has not articulated the obviousness of the specific choices reflected in Appellant's claims.

Accordingly, Appellant submits that Claims 1-3, 5, 6, 11-21 and 24-67 are nonobvious over the AAPA and the Examiner's 35 U.S.C. §103 rejection should not be maintained.

VIII. CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1. A method of conducting transactions, comprising:
a first entity providing a first type of service to a second entity;
the first entity referring the second entity to a third entity for performing a first benefit for the second entity, the first entity not accepting fees for referring the second entity to the third entity and further not performing the first benefit for the second entity;
the third entity performing the first benefit for the second entity, the third entity accepting fees from the second entity for providing the first benefit; and
the third entity compensating the first entity for the first type of service the first entity provides to the second entity from fees the third entity charges the second entity for providing the first benefit.
2. The method of claim 1 wherein the first benefit comprises a second type of service performed by the third entity for the second entity.
3. The method of claim 2 wherein the first entity comprises an attorney, the second entity comprises a client, and the first type of service comprises legal services.
4. (Cancelled)
5. The method of claim 3 wherein the third entity comprises an asset manager, the second type of service comprises managing assets owned by the second entity, and the legal services comprise counseling the client regarding the assets managed by the asset manager.
6. The method of claim 3 wherein the legal services comprise a wealth or estate planning service.
- 7-10. (Cancelled)

11. The method of claim 2 wherein the second type of service comprises an asset management service managing assets owned by the second entity.

12. The method of claim 2 wherein the second type of service comprises a banking service managing an account for the second entity.

13. The method of claim 2 wherein the second type of service comprises a securities brokerage service for investments owned by the second entity.

14. The method of claim 2 wherein the second type of service includes management of a fiduciary instrument and the third entity is a fiduciary or agent of the fiduciary and the second entity is the grantor or beneficiary of the fiduciary instrument.

15. The method of claim 14 wherein the fiduciary instrument comprises a trust.

16. The method of claim 14 wherein the fiduciary instrument comprises a conservatorship.

17. The method of claim 14 wherein the fiduciary instrument comprises an executorship.

18. The method of claim 2 wherein the second type of service comprises insurance brokering services for an insurance policy involving the second entity.

19. The method of claim 2 wherein the second type of service comprises a real estate brokering service for real estate owned by the second entity.

20. The method of claim 2 wherein the second type of service comprises a personal property brokering service for personal property owned by the second entity.

21. The method of claim 2 wherein the second type of service comprises a property management service for a lease on real or personal property owned by the second entity.

22-23. (Cancelled)

24. The method of claim 1 wherein the first type of service is provided to the second entity on a periodic basis and the first entity is compensated on a periodic basis over a period of time that the benefit is being provided by the third entity.

25. The method of claim 1 wherein the first entity is compensated as a proportion of the value of the benefit provided to the second entity by the third entity.

26. The method of claim 1 wherein the first entity is compensated from fees charged by the third entity for providing the benefit over a period of time.

27. The method of claim 1 wherein the first entity is selected by the second entity, and the method further comprises the third entity referring the first entity to the second entity.

28. The method of claim 1, further comprising the third entity providing a membership affiliation with a plurality of first entity members, each first entity member referring at least one of the second entities to the third entity.

29. The method of claim 28 wherein the membership affiliation comprises an agreement between the first entity and the third entity, the agreement providing that the first entity is required to provide a defined amount of the first type of services for the second entity over a defined period of time.

30. The method of claim 28, further comprising the third entity providing an affiliated first entity member with instructional materials regarding the benefit provided by the third entity.

31. The method of claim 28 further comprising the third entity providing an affiliated first entity with instructional materials regarding the first type of services provided by the first entity.

32. The method of claim 28, further comprising the third entity providing the first entity member with secure access to an account that includes periodically updated information concerning the benefit provided by the third entity to each second entity that the first entity refers to the third entity.

33. The method of claim 28, further comprising the third referring prospective second entities seeking the first type of service to affiliated first entities.

34. The method of claim 28 wherein the membership affiliation is provided over a computer network.

35. The method of claim 32 wherein the computer network comprises the Internet.

36. The method of claim 28 wherein the affiliation of each first entity member is conditioned on there being at least one second entity to which the first entity has provided or will provide the first type of service with respect to the benefit provided by the third entity, the benefit provided by the third entity being conditioned on the second entity receiving the first type of services from the first entity.

37. A method of providing legal services to a client, comprising
enlisting at least one attorney to provide the legal services to the client;
the at least one attorney referring the client to an asset management entity, the at least one attorney not accepting fees for referring the client to the asset management entity, the asset management entity charging a fee to the client for managing the asset, and
the asset management entity compensating the attorney for the legal services provided to the client by paying the attorney a portion of the fees the asset management entity charges the client for managing the asset.

38. The method of claim 37 wherein the legal services comprise estate planning services.

39. The method of claim 37 wherein the asset management entity provides a banking service for managing a financial investment owned by the client.

40. The method of claim 37 wherein the asset management entity provides a securities brokerage service for securities investment owned by the client.

41. The method of claim 37 wherein the asset management entity provides a banking service for an account owned by the client and managed by the banking service.

42. The method of claim 37 wherein the asset management entity manages a fiduciary instrument as a fiduciary or agent of a fiduciary and the client is a grantor or beneficiary of the fiduciary instrument.

43. The method of claim 42 wherein the fiduciary instrument comprises a trust instrument.

44. The method of claim 42 wherein the fiduciary instrument comprises a conservatorship instrument.

45. The method of claim 42 wherein the fiduciary instrument comprises an executorship.

46. The method of claim 37 wherein the asset management entity provides insurance services for an insurance policy involving the client.

47. The method of claim 37 wherein the asset management entity provides a real estate management service for real estate owned by the client.

48. The method of claim 37 wherein the asset management entity provides personal property management services for personal property owned by the client.

49. The method of claim 37 wherein the asset management entity provides property management service for real or personal property owned by the client.

50. The method of claim 37 wherein the compensation paid to the attorney includes compensation for legal services provided to the client prior to referring the client to the asset management entity.

51. The method of claim 37 wherein the legal services are provided to the client on a periodic basis and the attorney is compensated on a periodic basis over a period of time that the asset is managed by the asset management entity.

52. The method of claim 37 wherein the attorney is compensated by the asset management entity in proportion to the value of the asset being managed by the asset management entity.

53. The method of claim 37 wherein the attorney is compensated from fees charged by the asset management entity for managing the asset over a period of time.

54. The method of claim 37 wherein the attorney is selected by the client, and the asset management entity is referred to the client by the attorney.

55. The method of claim 37 wherein the asset management entity provides a membership affiliation with a plurality of member attorneys, each member attorney referring the services of the asset management entity to at least one client.

56. The method of claim 55 wherein the membership affiliation includes an agreement between the attorney and the asset management entity, the agreement providing that the attorney is required to provide a defined amount of legal services to the client over a defined period of time.

57. The method of claim 55, further comprising the asset management entity providing the affiliated member attorneys with instructional materials regarding the services available from the asset management entity.

58. The method of claim 55, further comprising the asset management entity providing the affiliated member attorneys with instructional materials regarding the legal services provided being provided to the client.

59. The method of claim 55, further comprising the asset management entity providing the affiliated member attorneys with secure access to an account that includes periodically updated information concerning the asset managed by the asset management entity to each client that the attorney refers to the asset management entity.

60. The method of claim 55, further comprising the asset management entity referring prospective clients to a member attorney to provide legal services regarding the asset managed by the asset managing entity.

61. The method of claim 55 wherein the membership affiliation is provided over a computer network.

62. The method of claim 61 wherein the computer network comprises the Internet.

63. The method of claim 55 wherein the affiliation of each attorney member is conditioned on there being at least one client of the member attorney member with an asset being managed by the asset management entity, and wherein management of the asset by the asset management entity is conditioned on the client receiving legal services by an affiliated member attorney.

64. The method of claim 63, further comprising transferring the asset of the client under management by the asset management entity to another entity selected by the client if the client ceases to receive legal services from the member attorney or the member attorney ceases to be affiliated with the asset management entity.

65. A third-party compensation method for providing legal services to a client, comprising;

establishing a relationship between an attorney and the client to provide legal services to the client concerning management of an asset owned by the client;

the attorney referring the client to an asset management entity to manage the asset of the client, the attorney not accepting fees for referring the client to the asset management entity;

establishing a relationship between the client and the asset management entity, and, pursuant to the relationship, the asset management entity managing the asset owned by the client and charging a fee to the client for managing the asset;

establishing a relationship between the attorney and the asset management entity; and

pursuant to the relationship between the attorney and the asset management entity, the asset management entity compensating the attorney for legal services provided to the client regarding the asset being managed by the asset management entity, the compensation being provided from the fees the asset management entity charges the client for the management of the asset.

66. A third-party compensation method for providing legal services to clients, comprising:

providing a network of member attorneys affiliated with an asset management entity;

the member attorneys providing legal services to clients regarding respective assets owned by the clients;

the member attorneys referring clients to the affiliated asset management entity, the member attorneys not accepting fees for referring the clients to the affiliated asset management entity;

the asset managing entity managing the respective assets of the clients, the asset management entity charging the clients fees for managing the assets; and

the asset management entity compensating each member attorney for the legal services provided by each member attorney to each of the member attorney's clients having an asset managed by the asset management entity.

67. A third-party compensation method for providing legal fees to an attorney comprising;

establishing a first relationship between a client and the attorney, the attorney providing legal advice to the client concerning the clients wealth and not accepting fees for referring the client to a wealth management entity;

establishing a second relationship between the client and a wealth management entity, the wealth management entity charging a fee to the client to manage the wealth of the client; and

establishing a third relationship between the wealth management entity and the attorney, the attorney referring the client to the wealth management entity and the wealth management entity compensating the attorney for legal services provided to the client.

68 – 77. (Cancelled)

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

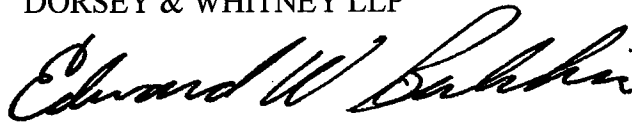
None.

XI. CONCLUSION

For all of the reasons stated above, the rejection of claims 1-3, 5, 6, 11-21, and 24-67 should be reversed.

Respectfully submitted,

DORSEY & WHITNEY LLP

A handwritten signature in black ink, appearing to read "Edward W. Bulchis". The signature is fluid and cursive, with the first name "Edward" being more prominent.

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